



25 AUG 2003

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In re Application of	:	
Cabantchik et al.	:	
US Application No.: 09/868,083	:	
PCT Application No.: PCT/IL99/00677	:	DECISION ON PETITION
International Filing Date: 13 December 1999	:	UNDER 37 CFR 1.181
Priority Date: 17 December 1998	:	
For: METHOD FOR MEASURING NON-	:	
TRANSFERRIN BOUND IRON	:	

This decision is in response to the 19 December 2002 petition under 37 CFR 1.181 to withdraw the holding of abandonment in the above-referenced international application. The petition is **GRANTED** as discussed below.

#### BACKGROUND

On 13 December 1999, Applicants filed international application PCT/IL99/00677, which claimed priority of an earlier application filed on 17 December 1998. A copy of the international application was communicated from the International Bureau to the USPTO on 22 June 2000. A Demand for International Preliminary Examination was filed on 11 June 2000, prior to 17 July 2000, the end of the 19-month period after the 13 December 1998 priority date. The period for paying the basic national fee is thus 30 months and ended at midnight on 17 June 2001.

On 14 June 2001, Applicants filed a transmittal letter for entry into the national stage in the United States (Form PTO-1390) along with the \$430 basic national fee (small entity) required by 35 U.S.C. 371(c)(1) and 37 CFR 1.492(a)(5), but not an oath or declaration.

On 17 July 2001, a "Notification of Missing Requirements under 37 CFR 371 in the United States Designated/Elected Office (DO/EO/US)" was mailed, requesting that an oath or declaration in compliance with 37 CFR 1.497(a) and (b) be submitted within the later of 2 months from the mailing date of the Notification of Missing Requirements, or, 32 months from the 17 December 1998 priority date. The reply period was extendable under 37 CFR 1.136(a).

The oath or declaration was not filed on or before 17 September 2001, 2 months from the 17 July 2001 mailing date of the Notification of Missing Requirements, which was later than 17 August 2001, 32 months from the 17 December 1998 priority date.

On 21 November 2002, a Notice of Abandonment was mailed.

### DISCUSSION

The application file does not contain an oath or declaration. The instant petition asserts that a declaration in response to the Notification of Missing Requirements was timely mailed on 19 November 2001. In support, the petition encloses copies of: a declaration; a request for a 1-month extension of time; a fee transmittal indicating enclosure of a \$249 check for the \$110 extension of time, the \$130 surcharge, the \$9 extra claims fee, and authorizing the USPTO to charge "any fees which may be required" to a deposit account; and a transmittal form that contains a 19 November 2001 Certificate of Mailing, allegedly mailed on that day with the above papers.

The above check is not shown in the USPTO record. The payments of these fees were posted on 6 February 2002 based on a \$249 check mailed on 1 February 2002 with, *inter alia*, a declaration presented as a duplicate of that allegedly mailed on 19 November 2001.


### CONCLUSION


In view of the above, the Office concludes that a declaration was mailed on 19 November 2001 as asserted in the instant petition, but apparently was not received in the USPTO. Moreover, a review of the declaration submitted with the instant petition reveals that it complies with the provisions of 37 CFR 1.497(a) and (b). The petition is thus granted. The holding of abandonment in the international application, as to the United States, is hereby withdrawn and the 10 February 2003 Notice of Abandonment vacated.

Given that a 2-month extension of time would have been required if the declaration was indeed mailed on 19 November 2001, and the fee for only 1-month extension of time was submitted, the deficiency of \$290 has been charged to Deposit Account No. 02-4377 as authorized.

Applicants have completed the requirements for acceptance under 35 U.S.C. 371(c). The application has an international filing date of 13 December 1999 under 35 U.S.C. 363, and a 35 U.S.C. 371 date of **19 November 2001**.

This application is being forwarded to the National Stage Processing Division of the Office of PCT Operations for continued processing.

  
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